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January 11, 2011

BY HAND

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

ENTERED
Office of Proceedings
JAN 11 2011
Part of
Public Record

Re: STB Docket No. 42127, *Intermountain Power Agency v. Union Pacific Railroad Company*

Dear Ms. Brown:

Enclosed for filing in the above-referenced docket are an original and ten copies of Union Pacific Railroad Company's Answer.

Please indicate receipt and filing by date-stamping the enclosed extra copy and returning it to our messenger.

Thank you for your assistance.

Sincerely,



Michael L. Rosenthal
Counsel for Union Pacific Railroad
Company

Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

228622



INTERMOUNTAIN POWER AGENCY

Complainant,

v.

UNION PACIFIC RAILROAD COMPANY,

Defendant.

Docket No. 42127

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UNION PACIFIC'S ANSWER

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January 11, 2011

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

INTERMOUNTAIN POWER AGENCY

Complainant,

v.

UNION PACIFIC RAILROAD COMPANY,

Defendant.

Docket No. 42127



UNION PACIFIC'S ANSWER

Defendant Union Pacific Railroad Company ("UP") hereby answers the Complaint filed by complainant Intermountain Power Agency ("IPA") in this proceeding. UP denies all of the allegations in the Complaint except where this Answer specifically states otherwise. UP responds to the allegations in each separately numbered paragraph of the Complaint as follows:

1. UP admits that the Intermountain Power Project ("IPP") is located near Lynndyl, Utah, which is in Millard County. UP denies the remaining allegations in Paragraph 1 because it lacks knowledge or information sufficient to form a belief as to their truth.
2. UP denies the allegations in Paragraph 2 because it lacks knowledge or information sufficient to form a belief as to their truth.
3. UP admits that it provides common carrier service and engages in the transportation of freight in interstate commerce. UP further admits that it is subject to certain provisions of the ICC Termination Act and, in certain circumstances, to the jurisdiction of the Surface Transportation Board ("STB"). The scope of the ICC Termination Act and the STB's

jurisdiction are questions of law to which no response is required; to the extent a response is required, UP denies the allegations. UP denies the remaining allegations in Paragraph 3.

4. UP denies the allegations in Paragraph 4 because it lacks knowledge or information sufficient to form a belief as to their truth.

5. UP denies the allegations in the first sentence of Paragraph 5 because it lacks knowledge or information sufficient to form a belief as to their truth. UP admits the allegations in the second sentence of Paragraph 5.

6. UP admits the allegations in the first two sentences of Paragraph 6. UP denies the allegation in the third sentence of Paragraph 6, but avers by way of further response that UP and Utah Railway Company ("URC") have interchanged coal from the Savage Coal Terminal at Provo, Utah, for transportation to IPP. UP denies the remaining allegations in Paragraph 6 because it lacks knowledge or information sufficient to form a belief as to their truth.

7. UP admits the allegations in the first two sentences of Paragraph 7. UP denies the allegation in the third sentence of Paragraph 7, but avers by way of further response that UP and the former Denver & Rio Grande Western Railroad had in the past moved coal from Skyline Mine to IPP. UP denies the remaining allegations in Paragraph 7 because it lacks knowledge or information sufficient to form a belief as to their truth.

8. UP admits that it has interchanged coal with URC at Provo, Utah, for delivery to IPP. UP admits the allegation in the second sentence of Paragraph 8. UP denies the remaining allegations in Paragraph 8 because it lacks knowledge or information sufficient to form a belief as to their truth.

9. UP admits the allegation in the second sentence of Paragraph 9. UP denies the allegations in the first and third sentences of Paragraph 9 because it lacks knowledge or information sufficient to form a belief as to their truth. The final sentence of Paragraph 9 states a legal conclusion to which no response is required; to the extent that a response is required, UP denies the allegation in the final sentence of Paragraph 9.

10. UP admits the allegations in Paragraph 10.

11. UP admits that IPA and UP have negotiated over the terms and conditions for a possible extension of or successor agreements to Contracts UP-C-5270 and UP-C-53328 but have been unable to reach agreement. UP denies the remaining allegations in Paragraph 11.

12. UP admits that it received the document attached as Exhibit No. 1 to the Complaint. UP denies the remaining allegations in Paragraph 12. UP avers by way of further response that the document attached as Exhibit No. 1 to the Complaint speaks for itself.

13. UP admits that it sent the document attached as Exhibit No. 2 to the Complaint. UP denies the remaining allegations in Paragraph 13. UP avers by way of further response that the document attached as Exhibit No. 2 to the Complaint speaks for itself.

14. UP admits that it received the document attached as Exhibit No. 3 to the Complaint. UP denies the remaining allegations in Paragraph 14. UP avers by way of further response that the document attached as Exhibit No. 3 to the Complaint speaks for itself.

15. UP admits that it sent the document attached as Exhibit No. 4 to the Complaint. UP denies the remaining allegations in Paragraph 15, including in particular IPA's characterization of UP's statements in the document. UP avers by way of further response that it believes it complied with both the letter and spirit of the STB's rules regarding establishment of common carrier rates and that IPA was insisting that UP take actions that were not required by

the STB's rules. UP avers by way of further response that the document attached as Exhibit No. 4 to the Complaint speaks for itself.

16. UP admits that it sent the document attached as Exhibit No. 5 to the Complaint. UP further admits the allegations in footnote 1 to Paragraph 16. UP denies the remaining allegations in Paragraph 16. UP avers by way of further response that the document attached as Exhibit No. 5 to the Complaint speaks for itself.

17. UP admits the allegation in Paragraph 17.

18. UP denies the allegations in the first sentence of Paragraph 18. UP avers by way of further response that the challenged rates may exceed 180% of the variable costs of providing service, as calculated using the method adopted in STB Ex Parte No. 657 (Sub-No. 1), *Major Issues in Rail Rate Cases*. The second sentence of Paragraph 18 states a legal conclusion to which no response is required; to the extent that a response is required, UP denies the allegation in the second sentence of Paragraph 18.

19. Paragraph 19 states a legal conclusion to which no response is required; to the extent a response is required, UP denies the allegations in Paragraph 19.

20. Paragraph 20 states a legal conclusion to which no response is required; to the extent a response is required, UP denies the allegations in Paragraph 20.

21. Paragraph 21 states a legal conclusion to which no response is required. However, UP avers by way of further response that, if this case is not dismissed on the basis of lack of market dominance or other grounds, the reasonableness of the challenged rates should be examined using the constrained market pricing principles adopted on *Coal Rate Guidelines – Nationwide*, 1 I.C.C.2d 520 (1985), as further refined and applied in subsequent decisions by the Interstate Commerce Commission and the Surface Transportation Board.

22. Paragraph 22 states a legal conclusion to which no response is required; to the extent a response is required, UP denies the allegations in Paragraph 22.

23. UP admits that Paragraph 23 contains quotations from 49 U.S.C. § 11101.

24. UP admits that 49 C.F.R. Part 1300 addresses requirements for disclosing and establishing common carrier rates and that Paragraph 24 contains quotations from 49 C.F.R. Part 1300. The remaining allegations in Paragraph 24 state legal arguments to which no response is required; to the extent a response is required, UP denies the remaining allegations in Paragraph 24.

25. Paragraph 25 states a legal argument to which no response is required; to the extent a response is required, UP denies the allegations in Paragraph 25.

26. Paragraph 26 states legal arguments to which no response is required; to the extent a response is required, UP denies the allegations in Paragraph 26.

27. Paragraph 27 states legal arguments to which no response is required; to the extent a response is required, UP denies the allegations in Paragraph 27.

28. Paragraph 28 states a legal conclusion to which no response is required; to the extent a response is required, UP denies the allegations in Paragraph 28.

UP denies that an order granting any relief sought by IPA in this proceeding would be appropriate.

WHEREFORE, UP requests that the Complaint be dismissed with prejudice and that no relief of any kind be awarded to IPA, that UP be awarded its costs, and that the Board grant UP such other and further relief as may be appropriate.

Respectfully submitted,



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Counsel for Union Pacific Railroad Company

January 11, 2011

CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2011, a true and correct copy of Union Pacific's

Answer was served by hand and e-mail on:

C. Michael Loftus
Christopher A. Mills
Andrew B. Kolesar III
Daniel M. Jaffe
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Michael L. Rosenthal